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Aug 19 2025

SC Court of Appeals

**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT**

Elise Cromwell,

Appellant,

vs.

Medical University of South Carolina
Hospital Authority and the Medical
University of South Carolina,
Respondents.

Appellate Case No. 2025-001433

**MOTION TO REINSTATE APPELLATE
CASE**

Now comes Counsel for Appellant, Elise Cromwell, respectfully requests that this Motion to Reinstate Appellant Case No. 2025-001433 be granted for the following reasons.

STATEMENT OF THE CASE

This case arises before the Charleston County Court of Common Pleas for the Ninth Judicial Circuit on May 21, 2018, when Appellant filed her Complaint. Respondents later filed their Motion to Dismiss on July 11, 2018, in lieu of an Answer. Respondents additionally filed their Memorandum of Law in support of their Motion to Dismiss on November 29, 2018. Subsequently, an Order was rendered on December 18, 2018, denying the Respondents' Motion to Dismiss. Respondents later filed a Motion to Alter/Amend on January 8, 2019. Appellant later filed a Memorandum in Opposition to such Motion on January 22, 2019. Subsequently, Respondents' Motion to Alter/Amend is denied as well. Respondents then filed their Answer on February 20, 2019, upon which they amended it on March 21, 2019. Respondents subsequently filed their Motion/Judgment on the Pleadings on April 8, 2019, and an Order was rendered on September 9, 2019, for lack of prosecution. Respondents then filed a Motion to Restore such Motion/ Judgment on the Pleadings along with their Motion for Summary Judgment on

September 30, 2019, and October 4, 2019. Respondents then filed their initial Proposed Scheduling Order on October 23, 2019, which was granted the same day. Respondents later filed its second Proposed Scheduling Order on March 4, 2020, which was granted on March 5, 2020.

Respondents later filed their third Proposed Scheduling Order on May 12, 2021, which was granted the same day. The Appellant subsequently requested an Order of Protection from the Court on August 4, 2020, which was granted on August 11, 2021. A third Amended Consent Scheduling Order was filed by Respondents on November 9, 2021. Respondents subsequently filed its second Motion for Summary Judgment on February 10, 2022. A final scheduling order was submitted by the Respondents and was granted on February 24, 2022. Pursuant to such an order, Respondents filed an Order to Strike according to 40j, which was granted on March 22, 2022. Appellant subsequently filed a Motion to Reinstate such case according to 40j on March 20, 2024. Respondents subsequently filed a Memorandum in Opposition to Appellant's Motion to Restore on September 17, 2024. On December 3, 2024, a Consent Order to Continue a Motion to Restore Hearing was filed by Respondents on September 19, 2024. An additional Consent Order to Continue a Motion to Restore Hearing was filed by Respondents on December 3, 2024. Subsequently, a Joint Motion to Continue was filed by Appellant on January 24, 2025. Appellant, pursuant to a Motions Roster Publication on March 24, 2025, subsequently filed a Reply to Respondents' Motion in Opposition to Reinstate Case on March 28, 2025. Subsequently, Respondents filed their reply to Appellant's Motion in Opposition to Reinstate Case as well on March 28, 2025. Thereafter, an Order on Appellant's Motion to Reinstate Case pursuant to Rule 40j was given by the Honorable Judge Jessica Ann Salvini, denying such restoration of Appellant's case on May 8, 2025. Appellant subsequently filed a Motion to Reconsider to Restore Case on May 16, 2025, pursuant to the Order denying Appellant's Motion to Reinstate.

Appellant's Motion to Reconsider to Restore Case was subsequently denied on June 18, 2025, also by the Honorable Judge Jessica Ann Salvini. Appellant then timely filed her Notice of Appeal with the South Carolina Court of Appeals on July 18, 2025, appealing the June 18, 2025, decision from the lower court. On August 4, 2025, Appellant received a letter stating that Appellant's case was dismissed due to failure to provide proof of filing the Notice of Appeal with the Charleston County Clerk of Court, as required by Rule 203(d)(1) of the South Carolina Appellate Court Rules.

APPELLANT RESPECTFULLY REQUESTS REINSTATEMENT OF THIS
APPEAL

Appellant respectfully requests that Appellant Case No. 2025-001433 be reinstated, as Appellant's Counsel has had long-standing medical issues since the beginning of June that have required an Order of Protection from the lower courts. Appellant's Counsel has subsequently been able to file the notice of appeal with the Charleston County Clerk of Court on August 11, 2025, and can provide sufficient proof of such filing in this Motion (Exhibit A). Appellant's Counsel asks that the Court take judicial notice of such extenuating circumstances that contributed to Appellant's failure to provide sufficient proof of filing such notice of appeal to the Court.

In addition, Appellant's substantive arguments on appeal demonstrate clear merit as the Charleston County Court of Common Pleas' Order of June 18, 2025, is erroneous and a misapplication of the State and Federal Rules of Evidence. Appellant can demonstrate "good cause" under the 40j standard as to why her Motion to Restore was not filed within a one-year timeframe, as Defense Counsel's action excessively prolonged Appellant's case to where Appellant's Counsel was not certain of restoring such case until March 20, 2024, based on

ongoing negotiations and difficulty locating witnesses. In addition, Appellant's Counsel faced extenuating medical circumstances during the period that Appellant's case should have been restored, including COVID. Appellant's Counsel for good cause of (medical illness) (Exhibit B & C), which required protection throughout all Federal and State courts until August 1, 2025, establishes good cause for its inability to serve the Charleston County Clerk of Court with the Notice of Appeal.

CONCLUSION

Therefore, Appellant respectfully requests that this matter on appeal be reinstated based on extenuating circumstances and meritorious reasons. This will not prejudice the Respondent nor in the interest of Judicial economy, delay this Court's schedule in further proceedings.

Respectfully submitted,
s/Donald Gist
Donald Gist, Esq. (13098)
GISTL LAW FIRM, P.A.
4400 N. Main Street
Columbia SC 29230
PO Box 30007
Tel. (803) 771-8007
Fax (803) 771-0063
Email: dtommygist@yahoo.com

Attorney for Appellant

August 19, 2025

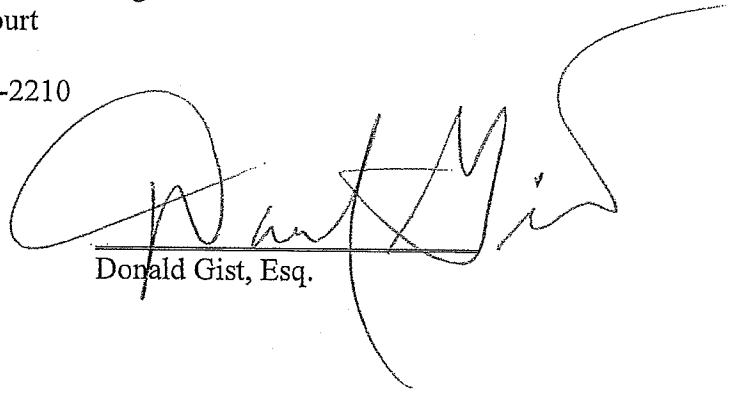
Exhibit A

2018-CP-1002580

CERTIFICATE OF SERVICE BY MAIL

The undersigned of Gist Law Firm hereby certifies that he has served the following on the Charleston County Circuit Court with the foregoing **Notice of Appeal** to the following addresses shown below on this 7th day of August 2025:

The Honorable Julie J. Armstrong
Charleston County Court
100 Broad St Ste 106
Charleston, SC 29401-2210



Donald Gist, Esq.

FILED
2025 AUG 11 AM 11:12
JULIE J. ARMSTRONG
CLERK OF COURT

RECEIVED

Jul 18 2025

SC Court of Appeals

**STATE OF SOUTH CAROLINA
COURT OF APPEALS**

Elise Cromwell,)
)
 Appellant,)
)
 v.)
)
 Medical University of SC Hospital)
 Authority,)
)
 Respondent,)
 _____)

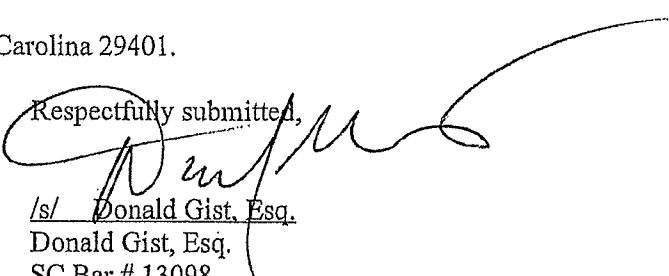
Case No. 2018-CP1002580

NOTICE OF APPEAL

Notice is hereby given that Plaintiff Elise Cromwell, in the above-captioned matter, by and through her undersigned attorney, hereby appeals to the South Carolina Court of Appeals from the Order Denying Motion to Reconsider to Restore Case, issued by Judge Jessica Ann Salvini, South Carolina's Ninth Circuit Court, on June 18, 2025 (a copy of which is attached hereto).

The Order of Judge Salvini follows a May 8, 2025, Order denying Plaintiff's Motion to Reinstate Case. Opposing counsel in this action is Bob Conley, Esq. (SC Bar #12243, One Seventy One Church Street, Suite 310, Charleston, South Carolina 29401.

Respectfully submitted,


/s/ Donald Gist, Esq.

Donald Gist, Esq.

SC Bar # 13098

GIST LAW FIRM, P.A.

4400 N. Main St.

Columbia, SC 29230

Tel. (803) 771-8007

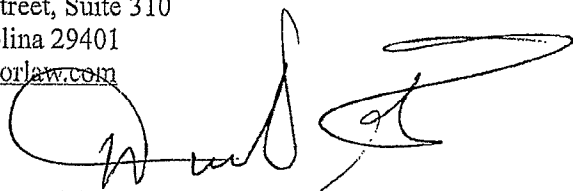
dtommygist@yahoo.com

Attorney for Appellant

CERTIFICATE OF SERVICE BY EMAIL

The undersigned of Gist Law Firm hereby certifies that he has served the following on the counsel of record with the foregoing **Notice of Appeal** by emailing a copy of same to the following email addresses shown below on this 18th day of July 2025:

Bob Conley
One Seventy One Church Street, Suite 310
Charleston, South Carolina 29401
bconley@clevelandlaborlaw.com

A handwritten signature in black ink, appearing to read 'Donald Gist', written over a horizontal line.

/s/ Donald Gist
Donald Gist, Esq.

RECEIVED

Jul 18 2025

SC Court of Appeals

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED



clerkofcourt.charlestoncounty.org

511 

DONALD GIST
4400 N MAIN ST
COLUMBIA SC 29203-5970

RECEIVED
Jul 18 2025
SC Court of Appeals



NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order/Motion to Reconsider is Denied

CASE NO: 2018CP1002580

Elise A Cromwell VS Medical University of South Carolina Hospital Authority , defendant, et al

This judgment was entered on the 18th day of June, 2025, and notice mailed first class on Friday, June 20, 2025, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at <http://clerkofcourt.charlestoncounty.org> or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-10-02580

Elise Cromwell,)
Plaintiff,)

**Plaintiff's Motion for
Reconsideration to Restore Case**

v.)
Medical University of South Carolina)
Hospital Authority and the Medical)
University of South Carolina,)
Defendants.)

RECEIVED
Jul 18 2025
SC Court of Appeals

Now comes Plaintiff, Elise Cromwell, by and through her undersigned Counsel, hereby request that this Court move to reconsider Plaintiff's Motion to Reinstate her case on the grounds that Plaintiff can demonstrate "good cause" as to why her case was not restored within one-year time limitation. The grounds for this motion are fully set forth in Plaintiff's Memorandum of Law in Support of this reply, which is filed contemporaneously herewith and incorporated herein by reference.

I. PROCEDURAL HISTORY

This case comes before the Court on May 21, 2018, when Plaintiff filed her Complaint. Defendants later filed their Motion to Dismiss on July 11, 2018, in lieu of an Answer. Defendants additionally filed their Memorandum of Law in support of their Motion to Dismiss on November 29, 2018. Subsequently, an Order was rendered on December 18, 2018, denying the Defendants' Motion to Dismiss. Defendants later filed a Motion to Alter/Amend on January 8, 2019. Plaintiff later files a Memorandum in Opposition to such Motion on January 22, 2018. Subsequently, Defendants' Motion to Alter/Amend is denied as well. Defendants then filed their

Answer on February 20, 2019, upon which they amended on March 21, 2019. Defendants subsequently filed their Motion/Judgment on the Pleadings on April 8, 2019, which an Order was rendered on September 9, 2019, for lack of prosecution. Defendants then filed a Motion to Restore such Motion/ Judgment on the Pleadings along with their Motion for Summary Judgment on September 30, 2019, and October 4, 2019. Defendants then filed their initial Proposed Scheduling Order on October 23, 2019, which was granted the same day. Defendants later filed is second Proposed Scheduling Order on March 4, 2020, which was granted on March 5, 2020. Defendants later filed their third Proposed Scheduling Order on May 12, 2021, which was granted the same day. The Plaintiff subsequently requested an Order of Protection from the Court on August 4, 2020, which was granted on August 11, 2021. A third Amended Consent Scheduling Order was filed by Defendants on November 9, 2021. Defendants subsequently filed is second Motion for Summary Judgment on February 10, 2022. A final scheduling order was submitted by the Defendants and was granted on February 24, 2022. Pursuant to such an order, Defendants filed an Order to Strike according to 40j, which was granted on March 22, 2022. Plaintiff subsequently filed a Motion to Reinstate such case according to 40j on March 20, 2024. Defendants subsequently filed a Memorandum in Opposition to Plaintiff's Motion to Restore on September 17, 2024. On December 3, 2024, a Consent Order to Continue a Motion to Restore Hearing was filed by Defendants on September 19, 2024. An additional Consent Order to Continue a Motion to Restore Hearing was filed by Defendants on December 3, 2024. Subsequently, a Joint Motion to Continue was filed by Plaintiff on January 24, 2025. Plaintiff pursuant to a Motions Roster Publication on March 24, 2025, subsequently filed a Reply to Defendants' Motion in Opposition to Reinstate Case on March 28, 2025. Subsequently, Defendants filed their reply to Plaintiff's Motion in Opposition to Reinstate Case as well on

March 28, 2025. Thereafter, an Order on Plaintiff's Motion to Reinstate Case pursuant to Rule 40j was given by the Honorable Judge Salvini, denying such restoration of Plaintiff's case on May 8, 2025. Plaintiff hereby files this Motion for Reconsideration of the May 8, 2025, Order denying Plaintiff's Motion to Reinstate.

II. Facts

Plaintiffs rely solely upon the facts as stated in their well-pled Complaint.

III. LEGAL STANDARD

"Rule 40j does not require that a party move to restore the case to the docket within one year after it was stricken. Instead, the unambiguous language provides that if the claim is restored within one year after it is stricken, the statute of limitations is tolled for that period." *Maxwell v. Genez*, 356, S.C. 617, 621, (S.C. 2023). "Rule 40j now requires all adverse parties to consent to the dismissal in writing, but the consent also operates to toll the statute of limitations for one year after the case is stricken from the docket as to each consenting party." language in *Graham v. Dorchester County Sch. Distr.*, 399 S.C. 121, 125, 528 S.E.2d 80, 82 (Ct. App. 2000). "A party can move to restore a case to the docket more than one year after the claim was stricken without running afoul of Rule 40(j); the party simply cannot take advantage of the one-year tolling period provided by the rule. *Maxwell*, 356, S.C. 617, at 621. "When by these rules or by notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the time may be extended by written agreement of counsel for an additional period not exceeding the original time provided in these rules, or the court for cause shown may at any time in its discretion (1) with or without written motion or notice order the period enlarged if request therefore is made before the expiration of the period as originally prescribed or extended or (2)

upon motion made after the expiration of the specified period, for good cause shown, permit the act to be done. . . “ *Id.*. Furthermore, as stated in *Maxwell*, Rule 40j does not have a deadline as to when a motion to restore must be filed. *Maxwell*, 356, S.C. 617, at 622.

II. Plaintiff can demonstrate “good cause” as to why her Motion to Restore was not filed within a one-year timeframe.

1. *Defendants’ actions during the timeframe of March 22, 2022, until March 20, 2024, were contradictory to restoring Plaintiff’s case.*

During the timeframe in which Plaintiff’s case was stricken from the docket on March 22, 2022, until March 20, 2024, when Plaintiff filed is Motion to Restore its case, Plaintiff and Defense Counsel had consented to mediation of this case. In addition, Defense Counsel before that time never opposed Plaintiff’s Motion to Restore. As a direct result of Defense Counsel’s actions, this caused Plaintiff’s Counsel to rely on continued negotiations between Defense Counsel and the ultimate decision that the case would be restored to the docket around March of 2024. Furthermore, during this timeframe of March 22, 2022, and March 20, 2024, when Plaintiff’s Counsel and Defense Counsel were negotiating this case and were attempting to mediate this case, Defense Counsel faced difficulty locating witnesses for Defendant MUSC, who had moved out of state. This alone prolonged negotiations for this case for months while Defense Counsel attempted to locate such witnesses. Based on Rule 40j “good cause” exception, Plaintiff asserts that Defense Counsel’s actions during this timeframe excessively prolonged Plaintiff’s case to where Plaintiff’s Counsel was not certain of restoring such case until March 20, 2024, based on Defense Counsel’s actions. Finally, Plaintiff asserts that she would be severely prejudiced by the acts of Defense Counsel if Plaintiff’s Motion to Reinstate is denied.

2. *Plaintiff's Counsel faced extenuating medical circumstances during the period that Plaintiff's case should have been restored.*

During the timeframe that Plaintiff's case should have been restored, Plaintiff's Counsel on record incurred extenuating medical emergencies during the year 2022, including COVID during the time Plaintiff's case should have been restored. COVID also affected all staff members of the firm during 2022, leaving the firm understaffed for some time. Plaintiff believes under the *Maxwell v. Genez* "good cause" findings a Rule 40j case to not be restored in one year, Plaintiff has demonstrated with extenuating medical circumstances a "good cause" as to why Plaintiff's Counsel did not file a Motion to Restore until March 20, 2024 for the reasons stated above. Plaintiff asserts that Plaintiff would be severely prejudiced by the unplanned medical issues of Plaintiff's Counsel and staff if Plaintiff's Motion to Restore is denied. In addition, the willingness of Defense Counsel to continue to negotiate with Plaintiff's Counsel on this matter shows specifically that Defendant would not be prejudiced by the restoration of this case to the docket with a specific scheduling order issued by the Court allowing both parties to seek Discovery which was never done in this case by Defendants continuous Motions to Dismiss which each time was denied by the Court and subsequent negotiations by the Defense and Plaintiff.

III. CONCLUSION

Based on the foregoing reasons of Defense Counsel's actions of prolonging Plaintiff's case and extenuating medical circumstances affecting Plaintiff's Counsel in 2022, Plaintiff believes she has demonstrated a "good cause" finding under the conclusions of *Maxwell v. Genez* that allows Plaintiff to file its Motion to Restore after the one-year timeframe. Therefore, the

Court should reconsider the Order of May 8, 2025, and Plaintiff's case should be restored to allow negotiations and settlement of such case.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully Submitted,

s/Donald Gist

Donald Gist (13098)

GIST LAW FIRM, P.A.

4400 North Main Street (29230)

Post Office Box 30007

Columbia, South Carolina 29230

Tel. (803) 771-8007

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Email: dtomygist@yahoo.com

Attorney for Plaintiff

May 16, 2025

GIST LAW FIRM, P.A.
4400 North Main Street
Columbia, South Carolina 29203
Telephone (803) 771-8007
Facsimile (803) 771-0063

Attorney at Law

Donald Gist

August 7, 2025

The Honorable Julie J. Armstrong
Charleston County Court
100 Broad St Ste 106
Charleston, SC 29401-2210

RE: Case No.: 2018-CP1002580
Elise Cromwell v. Medical University of SC Hospital Authority
Notice of Appeal

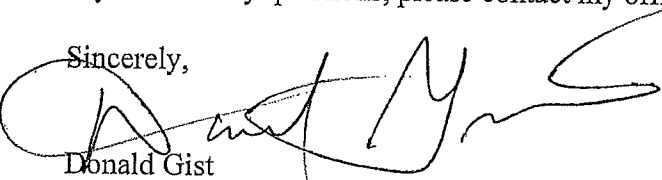
Dear Ms. Armstrong:

I have enclosed the Notice of Appeal filed on July 18, 2025, with the South Carolina Appeals Court, along with a certificate of service.

Please return a stamped copy of the Certificate of Service in the prepaid self-addressed envelope for our records.

If you have any questions, please contact my office at your earliest convenience.

Sincerely,


Donald Gist
Attorney for Appellant

cc: File

Exhibit B

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Roger Williams

Plaintiff

v.

University Medical Associates of the Medical University of South Carolina d/b/a MUSC Physicians and Intentional Infliction of Emotional Distress as to University Medical Associates of the Medical University of South Carolina d/b/a MUSC Physicians
Defendant.

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

C/V NO. 2024-CP-10-05693

PROPOSED ORDER OF PROTECTION

Donald Gist, Counsel for the Plaintiff, respectfully requests this Honorable Court to enter an Order for Protection from all court appearances, deadlines, and legal proceedings in this case from July 1, 2025, through August 1, 2025, due to a medical condition that has hindered the attorney's ability to perform professional duties.

This request is supported by a physician's directive excusing the undersigned from work and recommending complete medical leave for the specified period.

THEREFORE, IT IS HEREBY ORDERED that Donald Gist, Esquire, is granted protection from all court appearances, deadlines, and legal proceedings from July 1, 2025, through August 1, 2025, due to medical necessity.

No hearings or deadlines involving said attorney shall be scheduled during this period, and no adverse actions shall be taken against said attorney or their clients for failure to appear or respond during this time.

PRESIDING JUDGE

SO ORDERED this ____ day of _____, 2025.

_____, South Carolina



Charleston Common Pleas

Case Caption: Roger Williams VS Medical University Of South Carolina Physicians Associates , defendant, et al
Case Number: 2024CP1005693
Type: Order/Protection from Court Appearance

So Ordered

s/Julie J. Armstrong, Charleston County Clerk of Court

Exhibit C

**IN THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF SOUTH
CAROLINA CHARLESTON DIVISION**

Trena Nelson-Rivers,

Plaintiff,

v.

Berkeley Electric Cooperative Board,
Berkeley Propane Board, Berkeley Electric
Cooperative Inc., Michael Fuller, CEO of
Berkeley Electric Cooperative, Inc., John
“Jack” B. Williams-General Counsel of
Berkeley Electric Cooperative, Inc. H. Wayne
Dewitt-Board Chairman, and Louise Meade-
Vice President of Human Resources,
Defendant.

Case No.: 2:25-cv-02609-BHH-WSB

**NOTICE OF REQUEST FOR
PROTECTION**

Donald Gist, Counsel for the Plaintiff, respectfully requests this Honorable Court to enter an Order for Protection from all court appearances, deadlines, and legal proceedings in this case from July 1, 2025, through August 1, 2025, due to a medical condition that has hindered the attorney’s ability to perform professional duties.

This request is supported by a physician’s directive excusing the undersigned from work and recommending complete medical leave for the specified period.

No hearings or deadlines involving said attorney shall be scheduled during this period, and no adverse actions shall be taken against said attorney or their clients for failure to appear or respond during this time.

Respectfully Submitted,

s/Donald Gist

Donald Gist, Esquire

Fed. ID #7178

Gist Law Firm

4400 N. Main Street

Columbia, SC 29203

803-771-8007

dtommygist@yahoo.com

July 26, 2025

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Aug 19 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jessica Ann Salvini, Circuit Court

Judge

Appellate Case No. 2025-001433
Case No. 2018-CP-10-02580

Elise Cromwell

Appellant

v.

Medical University of South Carolina Hospital Authority and the Medical University of South Carolina

Respondents

PROOF OF SERVICE

I certify that I have served the Motion to Reinstate on Elise Cromwell by depositing copy of it via Email on August 19, 2025, and in the United States Mail, postage prepaid, on August 19, 2025, addressed to the attorney of record, Bob Conley, Esq., (SC Bar #12243), One Seventy One Church Street, Suite 310, Charleston, South Carolina 29401.

August 19, 2025

s/ Donald Gist
The Gist Law Firm, P.A.
4400 North Main Street
Columbia, South Carolina 29203
Attorney for Appellant